

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
Petition for Rulemaking

CG Docket No. 05-231

COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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SUMMARY

The Motion Picture Association of America (“MPAA”) believes that the closed captioning rules proposed by the Commission are unnecessary and would be counter-productive to providing high-quality closed captioning. It would be premature to impose specific quality standards at a time when the video programming industry is striving to meet rapidly approaching quantitative requirements. Government-imposed standards are unnecessary, because the industry has been highly responsive to existing and growing demand for quality captioning. Government-imposed quality standards would also be counter-productive, because they would impede much of the decision-making and flexibility necessary to provide effective captioning. And the burden of demonstrating compliance with a specific error rate would be so immense as to be impractical.

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The Motion Picture Association of America, Inc. (“MPAA”) hereby submits these Comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.¹

MPAA's member companies share the Commission's goals of ensuring high-quality closed captioning for hearing-impaired viewers. The video programming industry has been highly responsive to the large and growing demand for quality closed-captioning. Since the Commission's 1997 closed captioning rules have been in effect, the industry has provided hearing-impaired viewers robust access to both pre-recorded and live programming. This dramatic increase in closed-captioned offerings has been achieved in the face of tremendous technological changes in video

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programming distribution and delivery. Today, virtually all motion pictures and television programs produced and distributed by MPAA's member companies are closed captioned. Because market forces have proven so successful, the most efficient and effective way to ensure continued high-quality captioning is to allow the industry to continue to meet viewers' demand without further regulation.

I. THE PROPOSED RULES ARE ILL-TIMED

In the last ten years, the video programming industry has provided increased high-quality captioning to hearing-impaired viewers. The industry is diligently striving to meet the Commission's benchmark requirements for 100 percent of new programming to be captioned by January 1, 2006 and 75 percent of pre-rule programming to be captioned by 2008.² In advance of the 2006 and 2008 benchmarks, MPAA's member companies are adding captions to all of the titles in their libraries that are likely to be licensed for television distribution. The proposed rules would substantially burden the industry's efforts to meet these rapidly approaching benchmarks and negatively impact market efficiencies already in place.

Imposing a new regime of quality standards at this time could also short-circuit promising technological developments for closed captioning, such as voice recognition software.³ Because this software currently may not be as accurate in

² See 47 C.F.R. §§ 79.1(b)(1), (b)(2).

³ "New and innovative techniques for automating the production of closed captioning show great promise in the elimination of [high costs and prohibitive turnaround times for closed captioning services]. It is possible to mine speech processing techniques to develop an automated web-based system that accepts the electronic submission of pre-recorded video or webcast content

some cases as other captioning techniques, a government-imposed standard may encourage the video programming industry to prematurely abandon this emerging technology and rely wholly on existing closed captioning vendors for the foreseeable future.

II. THE PROPOSED RULES ARE UNNECESSARY

The Commission's proposed rules are unnecessary, because the significant and growing demand for closed captioning already provides a strong market incentive to the video programming industry to provide consistent, comprehensive, and high-quality captioning. MPAA's member companies currently make extensive contractual arrangements with their captioning providers to ensure high-quality captioning. The service agreements with the captioning vendors typically require: that captions for pre-recorded programs are expected to be completely accurate; that captions will be proof-read for accuracy; that captions will be accurately synchronized with the video; that the captioning vendors will use the most up-to-date captioning equipment; and that captioning personnel meet minimum qualification standards. If the rules under consideration by the Commission were in place, these service contracts would likely become more complicated, more concerned with potential liability, and more expensive.

and automatically returns closed captioning results. By automating a process that is still largely manual, such a system can drastically reduce turnaround times and significantly decrease costs." Kevin Erler, Brent Robertson, Marikka Rypa, "Automatic Closed Captioning: Toward Universal Accessibility," paper presented at the *2004 Center on Disabilities Technology and Persons with Disabilities Conference*, at <<http://www.csun.edu/cod/conf/2004/proceedings/212.htm>> (last accessed Nov. 10, 2005).

The current arrangements with captioning vendors allow for several layers of market-based quality controls. For each program that requires captioning, MPAA's member companies typically review the captions provided by the captioning vendor prior to its distribution for broadcast. If the captioning does not meet the service agreement requirements, the captioning vendor is required to correct any errors. Moreover, because there is no shortage of contracting vendors for pre-recorded programming, each captioning vendor is well aware that it can lose business to another vendor if it repeatedly fails to meet its contractual obligations. MPAA's member companies have not hesitated to switch captioning vendors when the service they received was inadequate.

The video programming industry takes seriously its obligation to provide accurate and error-free closed captioning to hearing-impaired viewers and has diligently worked to resolve any problems identified. MPAA's member companies have policies and systems in place to respond promptly to complaints about captioning that they receive directly from the viewing public or that are referred to them. According to company officials who address these complaints, most of the problems identified in pre-recorded programming are due to technical issues at various points along the various distribution chains – often including issues with viewers' own equipment – rather than errors in the quality or accuracy of the underlying captions. MPAA's member companies have identified no single technical issue that predominantly causes captioning errors, but the underlying captioning is rarely to blame.

When a technical error is found to be responsible, typically those issues are addressed and resolved by the local programming provider in question. In those rare cases where the underlying captioning of a pre-produced program is found to be erroneous after the program has already been broadcast, the programming provider will typically review a tape of the actual broadcast and then bring the issue to the attention of a designated company official as well as the captioning vendor. The error is corrected for future broadcasts, and efforts are redoubled to ensure that similar errors do not occur.

MPAA's member companies are keenly aware that the market for closed captioning is poised to grow substantially in the next decade. This growing market will increasingly demand high-quality captioning, free of inaccuracies and technical errors. As the population ages, more television viewers are likely to be affected by some hearing loss.⁴ A growing number of viewers who speak English as a second language use closed captioning as a literacy tool.⁵ A relatively new area of growth is content on the Internet, which the Commission has no authority to regulate. Closed captions of video programming are currently being used by Internet search tools such as Google to provide full text searches of video clips.⁶ These three growth

⁴ See Karen J. Cruickshanks, Ted S. Tweed, Terry L. Wiley, Barbara E. K. Klein, Ronald Klein, Rick Chappell, David M. Nondahl, Dayna S. Dalton, "The 5-Year Incidence and Progression of Hearing Loss: The Epidemiology of Hearing Loss Study," 129:10 *Archives of Otolaryngology—Head & Neck Surgery* (October 2003), 1041-46, at <<http://archotol.ama-assn.org/content/vol129/issue10/index.dtl>> (last accessed November 1, 2005).

⁵ See Margaret S. Jelinek Lewis, "Television Captioning: A Vehicle for Accessibility and Literacy," paper presented at the 1999 *Center on Disabilities Technology and Persons with Disabilities Conference*, at <http://www.dinf.ne.jp/doc/english/Us_Eu/conf/csun_99/session0057.html> (last accessed Nov. 10, 2005).

⁶ See Google Video ("Just type in your search term (for instance, ipod or Napa Valley) or do a more advanced search (for instance, title:nightline) and Google Video will search the closed

areas present significant opportunities for the video programming industry to reach new users of closed captioning. The industry has every incentive to continue to provide high-quality captioning and maintain a rigorous level of quality control.

III. THE PROPOSED RULES WOULD BE COUNTER-PRODUCTIVE

MPAA's member companies believe that imposing non-technical quality standards are impractical and would likely *reduce* the quality of captioning. Providing effective closed captioning is not simply a matter of rendering every word spoken onscreen; the process is less like stenography and more like translation. Because of inherent technical limitations, closed captioning entails necessary omissions and selections. In order to fit closed-captioning onto the screen in real time, the captioning cannot be an exact analogue to the dialogue spoken. These necessary omissions require difficult artistic choices as to what is the best way to convey the thrust of what the actors are saying and everything else that is occurring in sound during a scene.

Because of existing demand for quality closed-captioning, and member companies' commitment to the artistic works they produce, the video programming industry has developed a sophisticated set of closed captioning best practices. For example, dialogue that is being heard from off screen is typically captioned with italics. Brackets or parentheses are used to convey important background sounds or to clarify who is speaking. Musical note notations are used to signify that music is being heard. These are just the most obvious examples of best practices, but there

captioning and text descriptions of all the videos in our archive for relevant results") at <http://video.google.com/video_about.html> (last accessed November 10, 2005).

are numerous more subtle innovations that the industry has developed. All of these practices have grown out of trial and error in response to existing demand for quality captioning, and they illustrate why there is no need to mandate specific non-technical quality standards. As both content and technology grow more complex, closed captioning practices must continue to be flexible in order to continue to improve. Government-imposed quality standards would result in uniformity at the expense of quality and would reduce the effectiveness of closed captioning.

The Commission's proposal to impose a specific error rate is particularly problematic. Due to the necessary omissions and choices involved in providing closed captioning, it would be nearly impossible to define a reasonable standard for what constitutes an error. Dialogue in video programming is comprised of everyday speech, including half-sentences, interjections, and slang. Punctuation and grammar in such cases are often matters of subtle decision-making as to what would be the most effective caption. No uniform error-rate would likely to be able to take into account the numerous trade-offs, choices, and innovations that are involved in captioning each minute of a video program.

Not only is the proposed error rate highly problematic as to how an "error" would be defined, but no less problematic is how the error rate would be measured. Would the measure be minute by minute, half-hour by half-hour, hour by hour, program by program, day by day, or week by week? The shorter measures would be patently unfair, because any single "error," however defined, could easily exceed the maximum error rate. The larger measures are equally unfair, because it would

require a tremendous expense of resources to monitor compliance by counting every word of every caption over the course of a two-hour program, let alone a day or a week. For any “error” identified in a complaint, would the burden then be on the programming provider to demonstrate through reviewing hours upon hours of tape that the error rate was not exceeded? Even if the Commission could settle upon a perfect Goldilocks measure for determining the error rate, this type of monitoring would be unduly burdensome.

CONCLUSION

MPAA’s member companies share the Commission’s goals of ensuring high-quality closed captioning for hearing-impaired viewers. For the reasons discussed above, MPAA believes that the proposed rules would be unnecessary and counter-productive to meeting such goals. MPAA urges the Commission not to impose the rules under consideration.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.